

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	CRIMINAL ACTION NO. C-11-725-1
	§	
KAROL RAY MCATEE	§	

OPINION AND ORDER DENYING MOTION FOR CONTINUANCE


Defendant was indicted on July 27, 2011, and charged with simple possession of methamphetamine in violation of Title 21, United States Code, Section 844(a) (D.E. 6). In order to comply with the Speedy Trial Act, the trial must begin on or before October 5, 2011. 18 U.S.C. § 3161(c)(1). On September 7, 2011, defendant consented to a trial before undersigned United States Magistrate Judge and jury selection and trial were scheduled for October 4, 2011 (D.E. 15, 16). On September 28, 2011, the United States filed its Information of Prior Conviction (D.E. 20), which increased the maximum punishment and eliminated magistrate judge jurisdiction, requiring that the case be reassigned to District Judge John Rainey for trial. A superseding indictment was returned on September 28, 2011, changing only the weight of the methamphetamine (D.E. 21).

Pending is the motion of the United States Attorney for a continuance so that government's counsel may attend training (D.E. 18). Though the motion is unopposed, counsel for the defendant did not waive speedy trial and in fact, affirmatively requested that his client receive a speedy trial. The unavailability of government's counsel is not an excludable period of delay unless the government can show that the case is so unusual or complex that the failure to grant a continuance would deny the government continuity of

counsel. 18 U.S.C. § 3161(h)(7)(B)(iv). The government has not alleged or shown that this is the case. In fact the case involves an uncomplicated checkpoint stop and a charge of simple possession and there are other government attorneys available to try the case.

The motion for a continuance (D.E. 18) is denied. Jury selection is scheduled for October 4, 2011. This case is reassigned to the docket of Senior District Judge John Rainey.

ORDERED this 29th day of September, 2011.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE